U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 18 2005

EAC 03 218 51458

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an instructor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Candidate of Science diploma in bioorganic chemistry from the O.V. Bogatsky Physico-Chemical Institute in the Ukraine (Bogatsky Institute). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The director found that the petitioner thus qualifies as a member of the professions holding an advanced degree. We will not contest that finding, although we note that the petitioner failed to submit an evaluation of this foreign degree or a certified translation of the foreign language diploma. The notary's seal on the translation does not meet the translator certification requirements set forth at 8 C.F.R. § 103.2(b)(3). The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

On appeal, counsel states:

> First of all, it is worth noting that this decision, as well as most others issued by Vermont since that Center stopped issuing [requests for additional evidence], does not even mention NYSDOT, perhaps the most important case on [national interest waivers.] Clearly, Vermont is ignoring the law, and making up its own rules, which, by the way, it is failing to enunciate.

This assertion is simply false. At the top of page two of the director's decision, she states:

> The Administrative Appeals Unit, in Matter of New York State Dept of Transportation (AAO 1998), provided a three prong test to determine whether a waiver of [the] job offer is in the national interest.

The director then listed the three factors discussed above. Thus, counsel's assertion that the director did not mention this precedent decision is not supported by the record and, in fact, is contradicted by counsel's own statements later in his appellate brief, where he concedes that the director found that the petitioner's work is in an area of intrinsic merit and that the proposed benefits of the petitioner's work would be national in scope, the first two factors set forth in that precedent decision. We further note that every attempt by the director to explain the standard being used is dismissed by counsel as "boilerplate garbage." It is reasonable that language that sets forth the standard used in adjudicating all cases seeking this benefit would be repeated in the director's decisions.

We concur with the director that the petitioner works in an area of intrinsic merit, Nuclear Magnetic Resonance (NMR) spectroscopy, and that the proposed benefits of his work, improved understanding of macromolecules implicated in cancer and AIDS, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director concluded that "all of the letters of support and recommendation that you have provided appear to be from individuals who work with the beneficiary or have known him from the various academic settings where he has pursued his education." On appeal, counsel asserts that some "of the letters were in fact from people who knew the petitioner, but about half were not." Subsequently, counsel asserts that Dr. [redacted] Dr. [redacted] and Dr. [redacted] "have never worked with[,] collaborated with, studied with or supervised [the petitioner]." We note that Dr. [redacted] is a principal researcher at the Institute of Biomedical Sciences in Taipei, where the petitioner worked for two and a half years. Dr [redacted] indicates that he "knew" the petitioner. Thus, only two of the petitioner's six references are independent.

Counsel asserts that the director's concern regarding the independence of the petitioner's references as "law by administrative fiat." Counsel, however, provides no legal authority for the proposition that letters from one's own immediate circle of colleagues are sufficient to establish an influence on the field as a whole, the standard set forth in *Matter of New York Dep't of Transp.*, 22 I&N Dec. at 219, n.6. Counsel acknowledges that this case is "the most important case" on the benefit sought. We note that no federal court has overturned that precedent decision. As consistently stated in our decisions, letters from one's colleagues are important and necessary to explain the alien's role on various projects. Such, letters, however, are more persuasive when supported by other evidence of the petitioner's influence beyond those colleagues, such as independent letters from researchers who have applied the alien's work or frequent citation of the alien's work.

Equally important as the source of the letter is the content of the letters. General claims of ability and notoriety in the field are far less persuasive than concrete examples of the petitioner's influence in the field. We will now consider the content of the letters submitted.

The petitioner obtained a degree in physics from Mechnikov State University in 1981. In 1995, the petitioner obtained his Candidate of Science diploma from the Bogatsky Institute. On the Form ETA-750B, the petitioner listed in field of study as bioorganic chemistry. The petitioner worked for the Bogatsky Institute until 1998, when he went to work as a postdoctoral research fellow at the Institute of Biomedical Sciences in Taipei, Taiwan. In 2001, the petitioner accepted another postdoctoral position at the University of Connecticut Health Center where he was promoted to an instructor in February 2003. The petitioner remained in that position at the time of filing.

Dr. [redacted] the petitioner's collaborator at the Bogatsky Institute, attests to the petitioner's skill and creativity. He asserts that the petitioner developed "new NMR methods, experimental techniques and the research methodology" and "provided a number of improvements for the methodology and instrumentation." More specifically, Dr. [redacted] asserts that the petitioner's work with bioactive organic compounds and supramolecular complexes resulted in the identification of "the bioactive confirmation of neuropeptides toward the drug discovery." The petitioner "contributed substantially to the fundamental understanding of the receptor recognition of peptide hormones and neurotransmitters and has contributed to the novel and more effective neurotropic medicine substances." Dr [redacted] does not identify any medicines developed based on the petitioner's work. The record does not include a letter from any Ukrainian pharmaceutical companies attesting to their reliance on the petitioner's work.

Dr. [redacted] Director of the National NMR Facility at the Institute of Biomedical Sciences in Taipei, asserts that while working at that institute, the petitioner "solved an NMR structure of onconase to 0.34 A – the resolution which allows scientists to model an interaction of molecules and thus to understand the mechanism of a protein bioactivity." Dr. [redacted] another researcher at this institute, provides similar information, asserting that because of this work, "scientists can figure out a mechanism of antitumor activity of onconase and they can go further toward development of new effective therapeutic agents for cancer treatment." Both Dr [redacted] nd Dr. [redacted] explain that onconase is in phase three trials as an anti-tumor drug, but they do not indicate that the petitioner's work led to these trials. Rather, they appear to be saying that the petitioner's work on a drug already in trials as an anti-cancer agent will allow researchers to develop other such agents with similar properties. The record does not include letters from high-level officials of pharmaceutical companies expressing their interest in the properties of onconase in order to develop other anti-cancer agents.

Dr. [redacted] the petitioner's supervisor at the University of Connecticut, provides the following information:

> [The petitioner] discovered the biologically active conformation of several neuropeptides. Based on this result it has been possible to predict new neurotropic agents with selective antiamnesic and antidepressive potency. By elucidating the three-dimensional structure of onconase, a potent anti-cancer protein, the extremely high atomic resolution, [the petitioner] has significantly contributed to the design of effective agents for cancer and AIDS treatment. His work will greatly help biologists and therapists to better understand the nature of these diseases. His work is clearly in the national interest.
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> [The petitioner's] current project involves determining the three dimensional structure of the complex between cofilin and phospholipids molecules. Cofilin regulates the formation of actin filaments, which constitute the intracellular scaffold of most cells and are critical in eukaryotic cytokinesis. Cofilin regulates actin polymerization, but its interaction with cofilin is abrogated when it binds phosphoinositides. [The petitioner] has already identified NMR properties of every magnetic nucleus of cofilin and he published the results in the high impact *Journal of Biomolecular NMR*. He subsequently determined an atomic resolution structure of cofilin and has mapped the surface of the molecule that is responsible for binding phosphoinositides. Based on this information he has developed a novel model for how phosphoinositides regulate the interaction between actin and cofilin.

Dr. [redacted] concedes that the final work discussed had yet to be published. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field.

Dr. [redacted] an assistant professor at New York University, provides similar information, concluding that the detailed information provided by the petitioner's work allows for "a rational drug design." Dr. [redacted] does not assert that his laboratory or any other laboratory is pursuing such a design.

The most persuasive letter is from Dr. [redacted] a professor at the University of Alabama. Dr. [redacted] asserts that he is familiar with the petitioner from his publications and that he has invited the petitioner to give a seminar at the University of Alabama. Even this letter, however, merely speculates that the petitioner's work "is likely to lead to new therapeutic agents against cancer and HIV" and that the petitioner's current work "could eventually be one of the major milestones in the field of biology." While this letter reflects that the petitioner has some recognition beyond his immediate circle of colleagues, the letter is vague as to whether the petitioner's work has already proven influential. Dr. [redacted] does not indicate that his laboratory applied the petitioner's work after the petitioner's seminar. Nor does Dr. [redacted] identify any other institution that is applying the petitioner's work.

In his initial cover letter, counsel asserts that in 1998, the petitioner received the "International Renaissance Foundation – Open Society Institute (New York) Award (George Soros)." Counsel characterizes this award as "a highly competitive international award with a significant monetary stipend attached to it." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Several of the petitioner's references assert that the petitioner received a 1998 "International Science Foundation prize." None of the references attest to any personal knowledge of this award. Exhibit C includes the petitioner's academic diplomas and a second place diploma in the VII Scientific Competitive Conference of Young Investigators of the South Regional Scientific Center of the Academy of Science of the Soviet Union. Exhibit D includes a 1994 grant from INTAS and a foreign language document with a partial translation. The partial translation, which is not certified as required pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), reflects that the document is a letter to the petitioner advising him of "a grant for scholars and educators" from the Board of International Science and Education Program (ISEP). The top of the translation reads:

> International Renaissance Foundation
> Open Society Institute (New York)
> International Science and Education Program

The uncertified partial translation does not include any information as to the size of the stipend.

On appeal, counsel accuses the director of ignoring "a highly competitive international award with a significant monetary stipend" funded by [redacted] Subsequently, counsel references this "award" as a "fellowship" and in his conclusion he asserts that the stipend was $3,200.

We cannot fault the director for failing to consider documentation of a "prize" that does not meet the regulatory requirements for foreign language evidence. Specifically, as stated above, the regulation at 8 C.F.R.

§ 103.2(b)(3) requires a full certified translation for all foreign language documentation. Further, counsel's personal assertions regarding the significance of this "prize" and the amount of the stipend cannot be considered evidence.[1] *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, while several references mention a 1998 "International Science Foundation's prize" they do not discuss its significance as claimed by counsel. The record does not establish the relationship of the "International Science Foundation" to the "International Renaissance Foundation." Finally, recognition for achievements or significant contributions is one criterion for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even the requisite three criteria, warrants a waiver of that requirement.

Finally, the petitioner's publication record, while indicative of a prolific researcher, falls short of establishing his influence in the field. Counsel initially asserted that the petitioner had authored 36 published articles and presented his work at 10 international conferences. The record contains two abstracts and 16 articles. We will not presume the influence of an article from the journal in which it appears. Rather, we look for evidence of the impact of the individual article itself, such as evidence that it is widely cited. The record contains no evidence that the petitioner's work has been cited by other research teams, in review articles or in commentaries.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. The record does not, however, establish that the petitioner's work represented a groundbreaking advance in NMR spectrometry such that it can be viewed as having influenced the field as a whole.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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[1] While we are under no obligation to research information that should have been provided in support of the petition, and do not fault the director for not having done so, we have verified, via the Internet, that the website on the foreign language document is for the International Renaissance Foundation in the Ukraine, which is funded by George Soros. We emphasize that such information is not necessarily commonly known such that the director should have taken administrative notice of such a relationship. Rather, the petitioner should have provided the evidence we so easily obtained. The foundation, however, "makes its grants only to non-governmental organizations." As such, it appears that the award, while funded by the foundation, may be directly from the ISEP. Our Internet research into the ISEP reveals that it actually stands for the International Student Exchange Program. We were unable to find any information about the "Board of International Science and Education." Regardless, it is the petitioner's burden to demonstrate the significance of the grant and he failed to submit such evidence.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.